1948 File No. O. Watan/48

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Legal DEPARTMENT
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Subject.— plot

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Opinions under the Bombay Hereditary Offices Act, 1874

File No. O. Watan/48

Std. Sectt. Slip 24 B e.

434-A

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Legal Department File No.O. Watan/48.

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1815

1815

Office of the R.L.A.

Determination of nearest heir to a deceased representative watandar - right of widow Bombay Hereditary Offices Act, 1874, section 36.

The course of action proposed by Revenue Department is in order.

The determination of the nearest heir to a deceased representative watandar under section 36 of the Bombay Hereditary Offices Act, 1874 is expressly subject to the provisions of section 3 of Act V of 1856 whereunder the widow cannot be postponed in the order of succession. Consequently the widow Rakhmbai would be the nearest heir of the last deceased representative watandar Bhanu Singh and Government may order her name to be entered in the register.

Id/-P.H.L. 3/8

A.C.
Remembrancer of Legal Affairs.

U.O. to R.D. No.7288, dated the 3rd August 1918.

KAH/17-8.
G.C.

Office of the R.L.S.

no. revenue
Vatan at
Vekalvadi.
....
Vatan Act,
and Act V
of 1886.

"Before section 2 of Act V of 1886 was enacted there was no restriction or preference in the matter of succession and the vatan property devolved according to the ordinary law of inheritance applicable to the parties. Therefore before the said enactment came into force females inherited in the ordinary course of intestate inheritance and became holders of vatan property. A daughter inheriting to her father before 1886 became a vatandar and absolute owner of her father's vatan property. Thus many a vatan has left the original family and given rise to a fresh stock of vatan families" (see Khadria's Vatan Act p. 14; Government of Bombay V. Krochar 6 B.H.C.R. 238 A.C.J.); and Bai Gauri V. Government of Bombay 8 Bell.C.R.83 A.C.J.). In the present case the succession to the 8 anna share in the vatan held by the Gangpa family devolved in 1883 i.e. before section 2 of the Act V of 1886 came into operation on Gangabai Govind Chaudhari, daughter of the last male holder, and consequently she became the fresh stock of descent. The applicant having no right to claim succession in the Chaudhari family can have no grievance and his contention is untenable.

Id/-P.M.Lad 6/8

Remembrancer of Legal Affairs.

U.S. to R.V. No.7439 dated 6th August 1918.

KAH/12-5.
C.C.

Contd. from p.5

that such Samadhi are hereditary governed by the provisions of the Bom. Hereditary offices Act, the applicant's request deserved no consideration. The view expressed by the P.S.R.D. appears to be correct Any claim to the land made by Bavaji against Govt. would not appear to be cognizable by the Civil Court under cl.(a) of sect. 4 of the Bom. Revenue Jurisdiction Act, 1876.

Ex Id/-S.P.R. 20/9.

The nature of the tenure of the Samadi land is still a subject matter of litigation in another suit & the recent decision of the High Court in the Mawar suit has not been acquiesced in by Govt.
There is no objection to allowing the Comr's order to stand. Papers may be sent & returned.

U.O.R. to R.D. No.9 PR At. 20-9-20.

Id/-H.T.K. 21/9.

R.L.A. Id/-P.K.L. 22/9.

EAU/17-5.
4.0.

L.D. R.I. No. 7935 dated 26-6-1940.

The facts are fully stated by the Collr. of Bijapur, in his letter No. H.Z.P.- 993 dated 14-5-1938 The R.L.A. is requested to advise whether the order of the Comm. S.D. dated 3-5-1910 holding that Hucni, Sikander's sisters son, has a preferential claim for appointment over that of Bavaji, should be allowed to stand.

The main grounds urged by the applicant Mr. Bavaji are these:-

(1) That Hucni is a stranger to the collateral agnate family of deceased Sikander;

(2) that the personal law of the parties has no application to the case; and

(3) that the H.C. has held that Shetsandi service is watan service and as such governed by the Watan Act.

A Shet Sandi is an inferior village servant who performs certain revenue and police duties useful to Govt. In certain cases he has to perform services which are useful to the community. The question whether Shet Sandi land are watan under the Watan Act or not, has been concluded by the decision in Libaji V. Rama (1888) P.J 127, which is approved and followed in Vishnu V. Shankar, 33 Bom. L.R. p.114. According to the said decisions, a Shet Sandi holder is a watandar and his interest in land is that of a watandar. But Govt. of Bombay was not a party to these decisions and it has not yet accepted this view. The nature of the Shetsandi tenure was enquired into by Govt. in the past. In C.S.R.D. No. 4635 dt. 6-7-1880, Govt. held that

they were not prepared to admit that land held by Shet Sonadis was Watan property and subject to the provisions of the Bom. Hereditary Offices Act. An enquiry was made and evidence was collected which showed that Shet Sonadis generally and not the rights of watandars (G.R.R.D no. 667 dt. 6-2-1931). From the evidence which was then collected it became clear that the view taken by Govt. in 1931 & that the Shet Sonadis should not be regarded as watandars, and their office should not be held to be hereditary, was correct.

In view of the position stated above the provisions of sect. 36 of the Bom. Hereditary Offices Act would not be applicable. The practice is that family arrangements should not be interfered with, and that if for any reason it is necessary to appoint an outsider, the Coll'r. is at liberty to give him actual possession of the land or the rent of it. But when there is an heir, his claims should be considered before the appointment is made (G.R.R.D no. 626 of 1910 quoted at p. 242 of Watan Act by Rhodnis). Inheritance to Sonadi lands devolves according to the ordinary law applicable to the parties, Rashabi, the sister of deceased Sitender is reported to be still alive. Under the Mohamedan law a sister is a sharer and has, therefore, a preferential claim over Bavaji, who is a divided cousin of the deceased Sonadi who is divided from his brothers

dies leaving a minor son and the minor son also dies subsequently, then the mother of the minor inherits the minor's property and after the death of the mother, the minor's sister is entitled in preference to the paternal uncle of the minor or collateral heirs (vide G.R.R.D. no. 7173 of 1924, P 243 of Watan Act by Rhodnis). Since, as pointed out above, Govt. has not accepted the view of the H.C.

R.I.No.11101,
Dated 2.8.38.

submitted.

Please see Commr. S.D.'s endorsement and R.D notes at pp.13-15 ante. Gulkheri is an inam village of class V in Bagalkot taluka of Bijapur District. Messrs. Bhimaji Sarayam, Babaji Bhimaji and Bhimaji Gurunath are the inamdars who hold 1/3rd share each in the inam. The petitioner K.G. Patil is the officiating Patil of this village, his annual potgi having been fixed at Rs. 53/- according to the Bingate Scale under Prant Officers Orde dated 14-11-1928. Of this, an amount of Rs.0-7-0 is paid from Govt. treasury and the balance of Rs. 57-5-0 by the inamdars. In accordance with the orders contained in G.R. R.D. No.9790/33 dated 23-6-1934 the potgi payable to the petitioner from the Govt. treasury has been raised to Rs. 0-10-0 (potgi 0-7-0 + increase by 50%)- But as he does not receive the 50% increase on Rs. 57-5-0 payable by the inamdars who are unwilling to pay it. He therefore requests that the increase in the remuneration should be sanctioned to him. The commissioner S.D. states that the inamdars are liable to pay the increased potgi of Rs. 86/6/- to the Patil and if they repudiate their liabili steps can be taken to recover, the amount from them as in arrear of land revenue under sec. 81 of the Bom. Hereditary offices Act. S.D. states that in view of the provisions of sec. 23 of the Act and G.R. R.D. No. 5700/23, dated 28-5-24, the inamdars are liable to contribute their proportionate share in the 50% increase. That department therefore proposes to issue orders as proposed by the Commr. at 'A' of his endorsement after showing the papers to the R.L.A. again as to whether the proposed course would be legally in order.

2. The fourth para of sec. 23 of the Bom. Hereditary offices Act, 1874 provides that with the sanction of Govt. the Collector may, on occasion arises, alter the assignment and may increase or diminish it in value, such increase or diminution being made rateably among the holders in proportion to the profit derived by such holders respectively from the watan. The present remuneration of Rs. 53/-of the ashg. Patil of the village Kulkarni is fixed under sec. 23 of the Act and the inamdars are required to pay the amount of Rs. 67/9/- as their share of the patgi. The inamdars are also receiving a manual judi equal to Rs. 148/- in respect of patilki watan lands which are in the beneficial possession of outsiders. Since the Govt. has sanctioned a temporary increase of 50% in total cash remuneration given to patils the inamdars are liable to contribute their proportionate share in the 50% increase. The course proposed by the Comr. S.D. at 'A' of his endorsement appears to be legally in order. The papers /A may be seen and returned.

Id/- P.S.Kothavni 18/10

A.L.A. I agree. A may be done

Id/-A.T.K. 19/10.

R.L.A. Id/-P.H.L. 20/10.

N.C.R. to R.D. No.9923 dt.23-10-18

KAN/17-3.
4 c.

Office of the H.L.A.

Godkari Inam of Javli.

The assumption made by Secretary, Revenue Department that there is a conflict between the decision of the Civil Judge in Satara Suit No. 1333 of 1939 and the decision of the Bombay High Court in appeal No.27 of 1940 filed agains the decree in suit No.696 of 1938, is not correct. In Civil suit No.1333 of 1939 after shifting the evidence Government came to the conclusion that it was difficult to support the order of resumption passed by the Collector in view of the fact that the grant of the Godkari Inam was probably made to the family of Khairav and not to Khairav in his individual capacity, and consequently allowed a decree to be passed in that suit declaring that the Collec tor's order of resumption was ultra vires. Similar was th view taken by the High Court in appeal No.27 of 1940 in respect of the interpretation of the grant, and it was hel by the High Court that the family was in fact the original holder rather than Khairav personally. It is, therefore, clear that there is absolutely no conflict between the vie taken by the Civil Judge in suit No.1333 of 1939 and the High Court decision in appeal No.27 of 1940. It is true that in the concluding part of the judgment the High Court has expressed the view that the only result would probably be that the land would lose its character of inam and the new holder will have to pay full assessment. This view wa expressed in reply to the argument advanced by one of the parties that the Crown Grants Act (Actxx XV of 1895) would prevent the property from going by adverse possession or in any other way to any one other than the descendents of the original holder. The High Court held that in fact there was no question of adverse possession in the present case. In view of their interpretation of the sanad, and

that even if there be any such adverse possession, the alienee would acquire a title to the property by adverse possession, that is to say, the collaterals of Enairy to whom the lands have been assigned in partition would be entitled to hold them even by adverse possession even though the grant was to Enairy individually and not as manager of the family. It is, therefore, clear that the view expressed by the High Court in the concluding portion of the 2 judgement being hypothetical would not affect the interpretation of the ground that the grant was in fact to the family rather than to Enairy personally.

Sd/- T.M.L. 28/10.

C.C.

Remembrancer of Legal Affairs.

U.R. to A.J., No. 1173 dated the 20th October 1948.

RAU/17-5.
S. C.